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LEGAL ACTIONS IN ADULTERY AND WIFE-STEALING

CONFLICTS IN MARITAL LAW AND SOCIAL CUSTOM

Though it was illegal for a Comanche wife to desert her husband, to do so was a well established Comanche custom. More than that, custom provided for effective group cooperation in extension of aid to the would-be deserting wife and her absconder. Custom and law worked at cross-purposes. The cause lay in the clash of two opposing fundamental interests which could not be integrated. The result was such "lawless" behavior as Mr. Jerome Frank describes as arising from the "pretend rules" which are so common in human societies, rules which give expression in law to principles mouthed but not wholly believed in.[1]

Before the law Comanche woman was a quasi-chattel; her man was her *baron*. Under the system of contract marriage which prevailed, a girl was bestowed upon a man ofttimes many years her senior and not of her own choosing. According to the ideal pattern she adjusted herself to the arrangement, settling into a smooth and dutiful marital career. It is the expressed belief of the older Indians that such marriages were more successful and lasting than those which were formed of romantic liaison. Unfortunately, one cannot determine the relative percentages of successful marriages for the Comanche. The Comanche law system buttressed this marital arrangement by providing institutionalized instruments for the collection of restituitive damages by any husband whose sexual claim upon his wife was infringed upon by an adulterer or wife-absconder. The husband could mete extreme punishment upon the unfaithful and hapless wife. A marriage had the full protection of the law.

The basic belief that a man's rights in marriage were exclusive (except for the privileges extended to a brother under the anticipatory levirate) and not to be impinged upon unless he had released these rights through recognized divorce, ran into counter currents of custom in the existing notions of romantic marriage (wherein younger couples sought love-mates of their own choosing) and the prevailing behavior of males in the competitive struggle for personal ranking and the attainment of bravery status. The competition for bravery ranking which was institutionalized in coup counting found its opportunity for expression *within* the tribe in the taking of women from their husbands. This threw the wife-taker and the husband into direct conflict. Not raw conflict, however, for as shall be seen, mechanisms for settling the issue without fighting had been developed.

[1] Jerome Frank, *Lawlessness* (Encyclopaedia of the Social Sciences, vol. 10, 1937), p. 227.

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183 The Comanche populace greatly enjoyed the spectacle of wife-stealing.
684 The culture enhanced the procedure by providing for group cooperation in the absconding act. It is clearly discernible in this, that though the Comanches "believed" arranged marriages between an older man and younger woman were the best, their sympathies were with the young couple who tried to get together in spite of the formal pattern. Absconding took place when war parties were leaving the camp. The would-be absconder made himself a member of the raiding group and arranged for the woman to join him in the group at the first-night rendezvous. So the couple rode off on the foray with the gang of warriors.

171 Absconding with a war party is apparently unique among the Comanches, their own invention. The practice did not exist among the Shoshoneans from whom the Comanches stem. Among the Cheyennes such conduct was absolutely forbidden.[2]

PROCEDURE IN ADULTERY AND WIFE ABSCONDING

684 626 A Comanche male who had suffered a legal wrong was under social obligation to take action against the offender. For a man not to do so was not looked upon as an act of social grace; indeed, such behavior was a social disgrace. A man so acting was stamped not as magnanimous, but as lily-livered. Adultery and taking another's wife were direct attacks upon the prestige of the wife's husband. Both acts were unmistakable challenges which could not be ignored by the man who would maintain enough face to make life livable.

Naturally, the aggrieved party was not always inclined to act, nor was the reason always cowardice. If the wrong were not made public, it is obvious that public opinion could not drive a man to institute prosecution. Ridicule was the weapon used by society to cause a man to proceed after the cause for action had become public.

This is clearly brought out in the account of an adulterous youth as told by That's It.

Case 4. Adultery: Husband Slays Boy's Pony; Also That of Boy's Grandfather
Informant: That's It

"An old man had a handsome grandson. Being very proud of the boy, the old man liked to boast of him in public.

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[2] An enterprising warrior tried it once. The leader of the party immediately convened his followers in council to determine the action to be followed. The man and the woman were sent back to camp, but the warriors all promised gifts to be given to the aggrieved husband. On their return from the raid the promises were handsomely fulfilled. But they also effected a formulation of the rule that no man should ever take the wife of another on a raiding party. No subsequent violations of the rule ever occurred. Llewellyn and Hoebel, *op. cit.*

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"One day the boy sat in a tipi playing the stick game. There were many people present. The grandfather came in and squatted beside the boy as he was playing. The old man looked around and saw a good-looking woman there. He nudged his grandson in the ribs.

"With a sly look he whispered, 'That looks like the woman you had last night.'

"The boy looked up and told his grandpa to go away. Then the old man was hurt and said he said nothing wrong. He said it looked like her; no harm in that, is there? Then he was quiet for a few minutes.

"But the old man just couldn't keep still. He kept repeating his observation, how that good-looking woman looked like the one the boy had had the other night. He wouldn't shut up.

"The woman's husband was also there. Pretty soon he spoke up, saying, 'Yes, that's the fellow.'

"The old man left the tipi.

"Pretty soon the game broke up, and all the people went home. The woman's husband just got on his pony and rode over and shot the red mare which was the old man's favorite horse. The he went and killed the boy's pony. He had been letting the matter ride until that old grandpa talked about it in public.

"The boy was real sad and he said, 'Grandpa, you sure done wrong. Look what you got us into.'

"The old man couldn't say anything. He just went off and wept."

The Comanches in this respect were like Malinowski's Trobriand Islanders[3] and many another society. An act may be known by the public and winked at, but when the act is publicly labelled, self-conscious public indignation flares up and blasts the culprit with its hot breath.

Since there were no courts or assizes to be waited upon, action could be instituted at any time. Each case was met by the parties concerned as it arose, and the location was limited only by the necessity of carrying the action to wherever the offender could be found. At home, this was usually at the doorway of his tipi. If the offender was with a raiding party, the aggrieved could await the return of the absconder, or could pursue him. In prosecution, the aggrieved (a) accosted the defendant himself, stating the offense and the extent of damages which would satisfy him. This he might do if he were brave enough. Or, (b) he sent others to prosecute for him, signifying that he considered the matter not worthy of his personal attention, and at the same time minimizing the chance of violent outbreak. An extreme

[3] Concerning incest among the Trobrianders: "If the affair is carried on *sub rosa* with a certain amount of decorum, and if no one in particular stirs up trouble—'public opinion' will gossip, but not demand any hard punishment. If on the contrary, scandal breaks out—every one turns against the guilty pair and by ostracism and insults one or the other may be driven to suicide." (Malinowski, *Crime and Custom*, p. 80.)

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×627 instance of this method of procedure was to send the unfaithful wife herself on the onerous task of demanding damages from her lover.[4]

If the aggrieved deemed it wise to form a party to act in the prosecution of the case, he (c) took his group and sat aloofly astride his horse while his confreres laid the charge and negotiated. But he sometimes got impatient with the progress of the action and interceded himself. This led to violence. At every step, strong individual reactions threatened the proceedings.[5] It was not unusual, however, for the aggrieved to (d) send his group to carry out the whole procedure, refraining from appearing upon the scene himself. The situation is not the same as in (b) above.

Another alternative relied upon by men without war honors, lacking in

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[4] *Case 5. Adultery: Husband collects damages through wife*
Informant: Visits Her Relatives

627 684 "A woman used to go regularly to a hill to get power. Claiming to be a medicine woman, she induced her parents to build her a special tipi in which she could go to rest when she had returned from her pilgrimage for power. This went on for some time, when her husband began to suspect that her movements were not in the interest of medicine, as she claimed. He followed her one day and found her horse down by the creek. Turning back, he went by the tipi of a young man and heard his wife's voice inside. Looking in stealthily, he saw the pair lying together.

"Feeling very wrathful, the husband went home and asked his mother-in-law to take down his wife's special tipi. She refused. He then told his sister to do it, and she could not refuse him, so she removed it.

"When the woman came home and went to rest in her tipi, she found it gone. She went to her husband to ask where her tipi was. He invited her to come into his tipi and sit beside him. When she had done so, he pulled out his knife and cut her hair off close to the scalp, then cut her skirt short. In this bedraggled state he drove her through the camp with his whip. When they came by her lover's tipi the husband bade his wife call to him to come and see her. She called, but her lover did not appear.

"Her husband then sent her to collect damages from him. He demanded six horses, a saddle, bridle, and war costume. When she appeared before the young man in her sad state he was sorry for her and said, 'You look so pitiful; you may have anything you want that I have!'

"His mother loaded his horse with all his portable belongings, and the wife led it publicly through the camp to her husband. This satisfied him, so he kept her as a wife."

[5] *Case 6. Adultery, Homicide: Procedure breaks down*
Informant: Post Oak Jim

×627 684 682 While one of the bands was out on the warpath, a man learned that his wife had committed adultery. He decided to let the matter ride until they were back in safer territory. When again out of danger the aggrieved husband went with two friends to the culprit to ask for damages.

Negotiations were proceeding amiably when the husband became impatient with the procedure and shouted, "That's no way to talk. Why don't you beat him up or kill him!"

This made his adversary so angry that he stabbed the husband dead. At that the two friends of the slain man killed the offender.

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self confidence, and who were unable to muster a party for themselves, was (e) to entreat a war chief to act for the plaintiff in the matter. The tɛ́k-niwap undertook to see the matter to its close, whatever the consequences, once he agreed to open proceedings on behalf of the aggrieved. An aberrant form of the same type which completely reversed the principle involved was (f) the sending of an old woman to "prosecute" in a situation where the aggrieved feared the defendant, hoping through presenting his cause pitiably to touch the compassion of the offender and so gain larger damages than he himself would dare demand.[6] 627x

The crux of the procedure was bargaining. There was no question of evidence—except in sorcery. In the damage-seeking cases the evidence was obtained before action was brought. In wife-absconding cases the presence of the woman with the absconder was *prima facie* evidence which need go no further. In all our cases but one the bargaining was begun with guilt accepted by both parties. In cases of adultery, beyond *in flagrante delicto*, evidence came from witnesses or by confession of the wife. However it may be, except for cases of sorcery, there was no technique for obtaining evidence from the defendant. Nor was the defendant usually confronted with witnesses. The aggrieved had to ascertain to his own satisfaction who the guilty party might be. After this had been done the defendant could then be confronted.

And what if guilt was denied? Usually it was not. When the defendant refused to own up, the procedure apparently came to an impasse. The aggrieved might be angry enough to take illegal steps (violence), or he might possibly kill some of the accused's horses to satisfy his desire for damages. The latter course would be likely to lead to retaliation, however, for the defendant, in denying guilt, denied cause for damages and such peremptory taking of damages was to him illegal. The reaction of the defendant if the first recourse were taken by his accuser is problematical; it would depend pretty much on his temperament and guilt in fact. Denial 627x 681

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[6] *Case 7. Wife-Absconding: Husband sends old woman to collect*
Informant: Rhoda Bluefoot 627x 684●

A woman deserted her husband by joining a raiding party led by a noted warrior, who took her as wife. On their return to the main camp her husband did nothing to get her back because he was afraid of the warrior and his three brothers. So he sent an old woman to plead for her. Since the warrior wished to keep her, he sent back a gift of horses and goods to the husband in place of the woman.

This gift the husband had to accept, and he dropped proceedings.

Later the warrior was killed in a battle, and one of his younger brothers inherited the woman as wife. [587]

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The principle of "soak the rich" was also a practice of Comanche law. Damages were scaled partly in accordance with the wealth of the offender. There was no feeling that a rich man *ought* to pay more. It was just that he could, and the Comanche prosecutor stuck the defendant for whatever he could squeeze.

Damages usually sought were horses. Blankets, guns, saddles, clothing, robes or any other article of personal property *except medicine powers and related paraphernalia* were frequently asked for in addition. The horse, however, remained the basic consideration. For adultery or wife-absconding, from one to ten horses were transferred, seldom more. Special pains were often taken to specify the horse or horses demanded by the aggrieved, and quite frequently the demand was for what both punished and humiliated: the favorite horse of the defendant. No matter how many horses the defendant might offer which were just as good, a prosecutor would be adamant in his demand that the favorite be delivered over to him. Such horses were favored by the owner for qualities of grace, speed and stamina, or just as often because the animal had been the gift of a beloved friend. Old men today in reminiscent thought will say that in the old days a warrior ofttimes loved his horse more than his wife, or child, or any other human being. It is in the light of this that the demand for a favorite horse indicates that such damages—indeed, any damages—are more than mere economic compensation. As the wronged man suffered a spiritual hurt, so must the guilty party suffer a spiritual loss. Thus, damages collected were in part damage done to the wrong-doer's "face."

The *beau geste* which crops up in so many cases is simply another indication of this point. The magnificent and haughty slaying of horses given, or due, in damages was no act of economic nature. This fine disdain indicates a psychological satisfaction more precious than the mere reception of wealth in payment of a wrong.

Doubly, therefore, was bargaining tense, with pride and punishment playing upon the economic factors. The jockeying and sparring of the bargain, with some of the imponderabilia of impinging attitudes are strikingly revealed in the following typical case.

Case 9. Levirate Claim: Mexican vs. Breaks Something
Informant: Breaks Something

"Mexican was a friend of Touched With A Closed Fist. They called each other brother. When Touched With A Closed Fist died a long time ago, Mexican went to claim the widow for his wife. That was Woman. Woman didn't want to live with him, so she came to me.

"We were living down at Red Store when one day two men came to see me.

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They were Mangey Coat and Atsaçi. We talked, and then they said they had come to get damages for Woman. I was surprised. I asked them which one of them had a claim on her. 627x 684

"They answered, 'We have come to you from Mexican. He was the brother of Touched With A Closed Fist and this woman is his wife.'

"I called her and asked her if she were married to another man.

" 'No,' she said. She denied having anything to do with him or wanting to have anything to do with him.

"I was satisfied. Then I turned to those two men and asked what Mexican wanted in claim.

"They answered that he wanted a certain horse I had got from a dead friend, another horse, a saddle, and a Winchester.[9]

"I told them that I would not part with that first horse. It was dear to me. I told them I would give them another just as good.

"Atsaçi answered, 'We want that horse or none.'

"I tried three times to get them to agree on another horse, but they refused. Finally, I told them, 'All right, if you take that horse, you get nothing but that horse. It is enough.' I had something else to say, too, and I told Atsaçi I wanted to tell him something after we finished.

" 'What?' he said.

"I told him not to forget that he was married to two of my 'daughters' (they were daughters of my brother). In these words I spoke to him. 'If I accept these terms, and you insist on that horse, you can have it. But if you do, you will lose your two wives. I will take back my daughters from you. You are my son-in-law and yet you are not caring what you say; you are trying to get the horse I love.' [595] [602]

"Then Mangey Coat broke in right away. He said that Atsaçi wasn't thinking about what he was saying. He said they would agree to take another horse.

"That was what I wanted. Atsaçi was silent. He was ashamed. He was really older than I was and he had forgotten about being my son-in-law in that way. Then I asked him what he had to say to the agreement.

"He mumbled, 'Well, it's up to Mangey Coat. He is older than I am. It's up to him to have the say.'

"Well, I told them I was willing to do the right thing, so I gave them a grey mare, a bay horse, a good saddle and a gun. Later on that grey horse got to be a very good racer and won lots of money." [541]

Here is one of the few cases in which the *danger* of sending intermediaries appears. But ill-advised choice of counsel is a risk, even with us. Note also that a breach even of the levirate bites, though the brother-tie be purely classificatory; and that rights of the wife's "father," though but of the "father"-group, are available after marriage. 627x 602

[9] In strict form it was customary to ask for four different articles in damages.

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X627 595 Comparison at this point with a reference to Comanche law from the literature will indicate how much more deeply the stream runs than appears from the surface, and why special study with reference to legal behavior is fruitful. "Polygamy is practised to a great extent—some chiefs having more than ten wives, but inconstancy is the natural result of it, which is frequently punished by cutting off the nose of the transgressor, and sometimes even death; but more frequently the woman escapes unpunished and the seducer is deprived of all his available property, which is yielded to the injured party, by custom, without resistance."[10]

In those unfortunate cases in which the defendant was so poverty-stricken as to be unable to pay any damages whatsoever, his opponent had legal recourse to thrashing him on the bare back with a horse whip.

Case 10. Adultery: Buffalo Robe vs. Cliff
Informant: That's It

Buffalo Robe found Cliff lying with his wife. Since the husband knew that Cliff was too poor to pay him any damages. He took his quirt and started to whip the fellow. The culprit had to stand still and say nothing until Buffalo Robe was finished. Then he went home, his back raw and bleeding.

In later years Cliff used to boast about how he had lain with Buffalo Robe's wife and what a beating he took for it.

887 558 It is not that Cliff had become case-hardened: it is the satisfaction an old man derives from re-living and re-telling the pranks of his youth, as did the old men in the Smoke Lodge. As a youth, however, Cliff was horribly disgraced by the whipping. He had been physically and socially debased before the entire tribe. Only great war honors could have reestablished a position for him.

X627 ● 684
Case 11. Adultery: Whipping waived by Warrior
Informant: Post Oak Jim

"A bunch of Comanches were out raiding one time when some American soldiers caught them off guard. The soldiers got away with most of our horses. My nephew saved just one white horse from the soldiers. It was the only horse left in his band.

"Just after that bad luck, he got caught in adultery with another man's wife. He spoke right up and told the husband he would settle for it, for he admitted he was in the wrong and was willing to make it good. He offered his white horse to the husband—it was the only horse left. The husband was willing to settle it at that, since there were no more horses available. That was a lively horse and very skittish. Catching it was always hard work. This time, all the friends and my relatives joined in chasing the horse to bridle it. One of them finally captured it, but it fell

[10] Neighbors, *The Comanches* (Schoolcraft, *Indians*, vol. 2), pp. 131–132.

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and broke its neck. They all stood around looking at it. Then one of my brothers spoke up for my nephew, 'Well!' he said to the husband, 'We intended to do right by you. Now there is nothing left but to offer to let you whip him.' 684 ● 627×

"The boy took off his shirt to get ready.

"Then a man spoke up for the other side, and said, 'We see that your intentions are good. He's a young and fine man; we won't hurt him if he promises to be good in the future.

"The boy was glad to promise, and the case was settled right there."

Could anything bring out more strongly (a) the social approval behind the justified plaintiff; (b) the extent to which the aggrieved might want vindication rather than reward—and was under *pressure* to be magnanimous?

In a case of wife-stealing it was not incumbent upon the husband to seek damages. It was sufficient if he demanded the return of his wife, making the demand good. It also served if he slaughtered his wife for her act of desertion. Thus, in two of the twenty-two specific cases of wife-stealing of which we have record, the wife was slain outright by the husband without negotiation for her return or for damages. In slightly less than half of these cases the husband negotiated for the return of his wife and got her. In most of these instances no damages were paid. In an equal proportion of the absconding cases, the husband sued for damages, received a satisfactory settlement, and released his claim on his wife, thus permitting (or acknowledging) her change of marital status.

The unfaithful wife was in any event subject to severe chastisement, unless her husband feared her lover or absconder. Unless her lover's protection was adequate, her husband almost certainly whipped her, gashed the soles of her feet, or more commonly, cut off her nose. Though thus disfigured for life, there was no marked social stigma in noselessness. Pity, rather, was felt for the unfortunate woman, for the Comanches placed a high value on good looks. [832]

INTERMEDIARIES AND THE CHAMPION-AT-LAW

Women who were deserting their husbands rather consistently chose brave men as partners in absconding. Or, if the absconder was doubtful as to his own fighting ability, he placed himself and his runaway woman under the temporary protection of a war party leader. It is also said (no cases) that a would-be absconder sometimes induced a war party leader to steal the desired woman, then to release her for the lover after the settlement had been made. Consequently, the husband was more frequently than not the weaker party in the bargain situation. He was impelled to 627× 684

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take action by the force of social opinion; yet he had small chance of succeeding.

It is true that his kin would avenge his death if he were killed in carrying out his social obligation to prosecute. Small comfort in that. What he sought was not death but an adjustment in accordance with his legal rights. Where the balance of prowess lies normally on the side of the wrong-doer in an individualistic system, the process of law will be checked. This is because the ultimate legal sanction is force, the very power in which the prosecutor may find himself shorthanded. If this prevails generally, then the foundation is sapped from under the structure of legal order. But if the power of the wronged party equals that of the transgressor, a different situation exists. A settlement can be effected through bargaining. Here the sociological principles of compromise are clearly operative: an avoidance of force to effect exchanges in terms of mutual concessions. John R. Commons writes, "Arbitration is never accepted until each party to a dispute is equally afraid of the other, and when they have reached that point, they can adopt something better than arbitration, namely, negotiation."[11]

X627 602

Unconsciously operating on this principle, a Comanche prosecuted by himself only if sure of his own courage in relation to that of the defendant. But Comanche society took an important step forward in effecting an equalization of powers when the aggrieved was not strong enough to prosecute by himself. The aggrieved was allowed the privilege, apparently not customarily granted the defendant, of marshalling his kin and friends to aid him in seeking restitution. In many instances these partisans took over the complete responsibility of negotiations. In other cases, the aggrieved accompanied them on their mission, but refrained from entering the bargaining activities. In no single specific case did the defendant take recourse to similar reinforcements. It does not seem to have been his privilege. Consequently, the collectivization of the bravery of blood relatives and friends by the prosecutor may be viewed as a social mechanism whose function was to give added protection to the rights of the husband.[12]

This practice often allowed for such a show a force on the side of the aggrieved that the defendant could actually be cowed. Though this might seem unfair, there is more justice and stronger check to illegal action if it is

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[11] J. R. Commons, *A New Way of Settling Labor Disputes* (American Review of Reviews, Vol. 23), p. 328. Commons' truth is an overstatement. Not "equally afraid," but "enough to make battle highly inconvenient," is more accurate.

[12] The only contradictory evidence to this is the statement by Post Oak Jim that once there was trouble over damages between a couple of groups fighting with rifles, "so I didn't get close enough to see much." The fact of rifles indicates that it is a late case.

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×627 The Comanches showed a sense of justice at work and an awareness of the function of legal institutions in their society when they accorded the aggrieved party a customary massing of subsidiary force which was apparently denied to the aggressor. The dynamic quality of Comanche culture and the mark of creative genius is to be seen in the way in which this principle of equalization was refined and fitted to meet the needs of the person who had no group of "brothers" to back him in need. Comanche juridical processes were more than a mere phase of the status struggle among males. Men whose status was so low that on the personal and kinship basis they were, in effect, without status were still guaranteed protection under the Comanche law. This was done by harnessing the status drive in the society to the needs of the weak and aggrieved. There was the institution of *champion-at-law*.[14]

The functioning champion-at-law is best revealed in action through cases.

Case 12. Wife-stealing: Red Crooked Nose vs. a young warrior
Informant: Visits Her Relatives

×627 "The wife of Red Crooked Nose absconded with a young, good-looking warrior.
●684 In the raiding party were four other men and another woman. For two years the
581 pair remained away, and no one in the main camp knew where they were living. But one day some hunters found their camp and reported it to Red Crooked Nose. He was determined to get his wife back, but he had few war deeds to his credit. So he asked a brave, well-known warrior to go with him. The warrior consented to go.

"When they reached the absconder's camp, the woman saw them coming and ran to her young husband, saying that she wanted to stay with him. But when the young man saw Red Crooked Nose's champion he said, 'Against such a man I have no chance to keep you.'

"So they met outside the tipi. Red Crooked Nose picked up a quiver of arrows belonging to the young man, but his wife told him, 'Put them down. You can't do any better with them than their owner can.'

"Food was offered the newcomers, and they stated their mission. They said that they would accept no damages in place of the woman, that Red Crooked Nose needed her to care for their young child. So the young man ordered her horse brought, upon which was a good saddle, a silver-braided bridle, and good blankets. He told the woman to dress up. He told her, 'Take everything nice that belongs to you. This old man can't get things like these for you.'

"She gathered all her belongings, including fifteen horses. She was ready to

[14] There is no special word in the Comanche lexicon for this personage. A man acting as champion-at-law was simply referred to as tékniwap (war leader). Only men who were war leaders were sought to act as champions. Their legal activity on behalf of others was merely an incidental function of their status as ranking braves in the tribe.

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start back with them, but she cried pitifully to have to leave her young lover. After they had started, she lagged behind sullenly. 627^ 684● 581

"They had gone. The young absconder broke camp. He mounted and rode on past them. As his horses ran by, Red Crooked Nose killed one of them and called upon his party to take the meat he had shot for them. Then the owner of the dead horse scorned him, 'My feelings aren't hurt. *I* can get plenty of horses—like the grass, so many!' And he rode on.[15]

"He knew that Red Crooked Nose would not have dared to kill his horse without the warrior as protector.

"While stopping one night they heard that enemies were coming. The women were sent on. The men prepared for war. Before the battle started, the young man donned his best war paraphernalia. With his feathers flying he rode past the camp of Red Crooked Nose. He fought conspicuously and was killed.

"The champion saw him go down.

"He called to Red Crooked Nose, saying, 'It was we who caused him to be killed. I know you are a coward, but you have to go and walk in front of the enemy to protect us while I carry off his body.'

"Thus they took the young man off the field, and put his body on a horse. When the woman saw his body brought back, she tore her dress apart, slashed her body all over with her knife, and cut her hair off short. She embraced his body and wanted to throw her jewelry away in mourning. But the people pulled her away, telling her to keep it in remembrance of him.

"Red Crooked Nose and his champion rode up and mourned him. Then he was wrapped in blankets and buried. The camp broke up and continued on its way."

Though it is the activities of the intermediary which we must here examine, the fine devices of sarcasm and ridicule which make this history so rich in intrinsic sanctions deserve attention. The woman mocks her husband. The lover mocks. These are expressions of rage, or attempts to egg him into overreaching his position. The latter occurs. Again the lover mocks. But the combination of grief and shame works in him as his mockery seems to have worked in the husband. He seizes the occasion for a protest-sacrifice equivalent to suicide, save that it serves his tribe. The champion turns upon the championed. Red Crooked Nose's mourning is a penance. And one may be certain that his later repute suffered. The people told *her* to keep her jewelry in remembrance of a "wrong-doer," who, over-penalized, had made himself a hero. 627^ 558

[15] No empty boast for the young man. And it cut two ways. In itself this killing of a horse, over and above taking back the woman, is wholly proper. The overdoing lies in these points: the woman had brought double a heavy indemnity, the adjustment was over, and the strength of the husband was not equal to the deed he was performing. He was over-reaching and the young man's disdainful ignoring of his act showed him up in just that way.

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inside the kin group was the business of nobody outside the group; and that inside the group, the way of handling a situation depended largely on personality and temperament.

PRIVILEGED HOMICIDE

One type of killing which was not murder was the privilege of the husband to kill his wife. This is a variant of the purely in-group character of in-group friction. For this there was no retaliation. It was the acknowledged right of the man, and no one would lift a finger to legal action. Not only was the position of woman largely that of chattel, but the chattel passed from the original family to the husband. In return the obligation to provide food for the father-in-law lay on the husband. Escape for the woman lay in absconding,[3] but the number of instances in which the run-away wife was slain or mutilated by the husband is notable. In the twenty-two cases of wife-absconding collected from the Comanches the woman disputed was killed by her husband in four. Three adulterous wives were killed by their husbands in twenty-three instances of discovered transgression. Thus in forty-five Comanche cases of marital infidelity, seven women were slain at the hands of the husband or his henchmen. This is one in six.

Though the sample is admittedly too small to be *statistically* significant, and is possibly biased through selection on the part of informants, it is not without significance that eighteen percent of the adulterous wives were killed. That the statistical proportion cannot be greatly in error is buttressed in the wry observation of Rhoda Bluefoot that the wives of her father and his brothers never ran away; they were afraid of what would happen, because their men were well known as fierce fighters.

That the kinship group showed no inclination to retaliate when a husband killed his wife—their blood relative—can mean nothing else than a true relinquishing of the kinship bond upon marriage in favor of a supreme marital bond. That a father had to beg his son-in-law not to harm his daughter who had erred, and even offered gifts that her husband would not harm her (see pages 101–102) proves this.

The fact of potential marriage through sororate rights did not, however, establish the legal right of a brother-in-law to kill his wife's sister. She was not yet his wife; therefore, not his for disposal—not even when the woman was *also* the wife of the slayer's brother, giving thereby additional *expectant* rights through the levirate. The Comanche captive, Lost, met his death for killing the sister of his wife, who according to She Invites Her Relatives, was at the same time the wife of his brother.

[3] Women informants used by Dr. Mirsky held that household sabotage was the easiest way out. A woman could shirk her duty until her husband threw her out in disgust.

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671 the curse, its legal value was nil, for it was a sanction without teeth. In
×627 exactly the same way the application of physical force as a sanction turned about the point of relative powers. So in this type of case we found four basic outcomes: 1) where the aggrieved party was a weakling there was no prosecution (Sorcery in this respect presents a contrast to adultery and wife-stealing, wherein the aggrieved had to act. In these latter situations it was purely bravery against bravery, but bravery vs. sorcery seems to have been another thing.); 2) where the prosecution was forceful and so also was defense, the defense being more so, in one instance at least, the prosecution backed down—a primitive "*nol pros*"; 3) where the prosecution was forceful and/or the defendant was weak, the sorcerer was driven out or killed by a party for the defense (In the event of capital punishment through violence we do not know if it would give rise to blood feud, because in the only case which reached the bitter climax, the killing was within the family circle.); 4) where the prosecution was forceful and so also was the defense, the deadlock over the dispute of fact was broken by recourse to the conditional curse on the part of the defendant. The supernatural "tried for guilt," and acquitted or executed the defendant in one act. A reasonable length of time, namely, until the next change in seasons, was allowed for the judgment to take place. The issue was not hurried, but its results were accepted as final.

FORCED CONFESSIONS: THE THIRD DEGREE

×627 It has just been shown how the Comanche utilized divination and con-
684 ditional curse in sorcery. Now let us see how they set about testing marital fidelity. There were various techniques available to the husband as a prosecutor. These were ritualistic and non-ritualistic. The latter were simple and direct third-degree forms. A man took his wife to a lonely spot to build a fire. If the threat of what was coming did not force a confession from the lips of the wife, the husband then held her prone over the fire, lowering her closer and closer to the flames until she gave the information he wanted. Another method was to choke the woman until a confession was forthcoming. Whipping also served the end. One or the other of these methods was used in six out of the twenty-three adultery cases recorded in this study.

Not only was the confession of unfaithfulness forced in this way, but also the naming of the correspondent. On the basis of such confession suit for damages could be begun.

The case of Bone and his wife is illustrative of how evidence given by a witness was reinforced by such confession.

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Case 28. Adultery: Bone vs. Cómatsit
Informant: Visits Her Relatives (niece to Bone)

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"Bone and his younger brother were living together with Bone's wife. She was called Little. One day Little was out collecting sticks for the fire; it took her a long, long time, until Bone began to suspect things. He called on his little ten year old sister to go see what his wife was up to. The little girl went looking about. Finally she found the pile of wood near a tipi, so she went over and looked in. There she saw her grown-up sister-in-law lying in bed with a man.

" 'What are you doing there, auntie?' the little girl asked. 'My brother wants you to come home right away. You'd better hurry up.'

" 'Oh,' Little tried to reassure her. 'I just came in here for a smoke. You run along now.'

"The little sister did just that. She ran home as fast as she could to tell her brother she had seen his wife lying in bed in a certain tipi: how she had seen her there with Cómatsit (a Mexican name). Soon after, Little came home. 'Now we are going hunting,' announced Bone. 'Come, brother, we are going after game. We shall not stop to eat. You are coming, too,' he told his wife. Then they started out, but as soon as they were out of slight of the camp, Bone stopped the procession. He ripped the clothes from Little and violently threw her upon the ground. 'Now tell me,' he thundered, 'what were you doing in that tipi?'

" 'Oh, my husband,' Little wept, 'I did nothing there. Your little sister has told you an untruth. She does not know what she says.'

" 'We'll see,' muttered Bone. So saying, he placed his hands firmly on her throat. 'Now tell me,' he commanded. Then he choked her and choked her and choked her.

"At last she gasped, 'Yes, I did it.'

"Then he let go of her. With his freed hands he drew his knife and deftly cut off half her nose. 'Come, brother,' he said. So the brother picked up their wife's clothes, and away they went, leaving poor Little lying on the ground where they had mutilated her. When they got back to the camp, Bone sent his little sister out again. 'Go to our wife's grandmother and tell her to go get her.' So the old grandmother went and found Little and took her home.

"Next Bone and his brother went to Cómatsit to sue for damages because of the offense he had committed. They got most of that man's fine clothes and six horses from him besides."

Another case shows how the third degree instituted on purely circumstantial evidence brought a confession and led to a damage suit which was settled by the defendant giving up three horses. Carrying A Sunshade told how Yellow Bear found a red bead under his bed one time when they were getting ready to move camp. How did that bead get there? It was not his own! And it was of the kind worn only by men. So he called on his *haits*[1] to accompany him with his wife to a lonely spot. Once there they started to "question" her. She denied everything at first, but after they had put

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[1] [i.e., his formal friend — Analyst]

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pressure on her, she owned up that the bead belonged to Touch A Person With A Closed Fist. When these words escaped her mouth, the friend, Little Medicine, shot her dead. Yellow Bear turned away with his friend, and they walked off leaving the dead woman to be sought after by her mother. Later they went over to Touch A Person With A Closed Fist and got the three horses from him.

Such techniques of procuriug evidence, so effective with women, could not be applied to men. Procedure had to rest on the evidence forthcoming from the woman's confession or upon definite knowledge possessed by the husband. When the defendant denied complicity in sexual transgression there could be no suit. Acceptance of guilt by the accused was a necessary basis to legal action. In only one instance were we able to get an example of denial maintained.

Case 29. Adultery: Defendant Denies Guilt and Is Shamed
Informant: Slope

"Early one evening a young man came to see a married woman. Unfortunately for them, the woman's husband came home early and saw the two near the tent. Startled, the young man ran off before the husband recognized him. But the husband questioned his wife to discover the boy's name. She told him who it was: a young fellow still living with his father. Her husband decided to go over the next morning to demand damages. When day came, the husband left for the boy's home. There he found that the offender was still in bed, so he called to his father saying, 'I want to see you. I've come to collect damages.'

"The father answered, 'Who's it on?'

" 'That boy of yours.'

"By this time the culprit had appeared, and they all sat down to talk the matter over. The husband asked the young man to sit next to him, and calling him 'brother,' declared that he didn't want much. Four horses would satisfy him.

"At this the boy spoke up. 'Who are these four horses on?'

" 'You.'

"The youth acted surprised. 'Why you must be mistaken,' he said. Then his father asked him whether it was true or not that he had wronged this man, and the boy denied it flatly.

"This denial enraged the husband. He pulled his knife and slashed off one of the young man's long braids of hair. Throwing it at his feet he cried, 'I was not going to do this, but if you insist on lying like a coyote, I'll sure make you look funny!' The boy and his father sat silent while the husband continued, 'That's all I'll do. I won't take any horses—but you sure do look funny.' And with that he stalked out."

This was a grievous insult—doubly so. To be minus a braid of hair made one conspicuous. Everyone would ask what had happened. To be compared

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to Coyote was to be held up alongside of that sly, ridiculous, untrustworthy mountebank who is the *Til Eulenspiegel* of Comanche mythology. The boy took it hard, too. He sulked in his lodge, ashamed to go out and face his friends. He thought his chance to save his face had come when an alarm of the approach of white military ran through the camp. He prepared to die gloriously, but was doomed to disappointment when the whites held out the olive branch.

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CONDITIONAL CURSE

The rough-and-ready third degree techniques fit well into the Comanche picture of war-like life. But beyond these forms there were other means at hand for the husband who chose to use them. These were ritualistic approaches to the supernatural which entered when called upon as a legal force. The supernatural was invoked through conditional curse and oath.

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The use of the conditional curse for proof was very specialized, indeed confined seemingly to adultery and sorcery cases. It was known as "sun-killing" taβéβekat. In adultery procedure the husband took his wife to a lonely spot and making smoke with his pipe, he addressed the charge to the sun and the earth and sometimes the moon. By these same powers the wife swore her innocence. These powers in their omnipotence knew the truth, and if the wife were guilty, they afflicted her with consumption. The usual fate of erring women who took the curse was, according to native dogma, that of Short Dress, wife of Kóhi. She denied her husband's charge, placing her hands flat upon the earth and calling upon the powers, while her husband smoked. She bade the sun, "May I die when the geese fly from the south to the north if I have done the thing he has charged me with."[8] She died the next spring.

In adultery, as in sorcery, the supernatural played the double role of judge and executor. The case was reated by the prosecutor and there was no more for him to do but await results.

More recent developments put another angle on the conditional curse. As Comanche women began to feel the emancipating effects of the impact of white contact, they refused to submit docilely to the curse. It was very unsettling to the men, but even so, That's It laughed as he thought of the startled discomfiture of the first husband to feel its effects. This man had accused his wife of adultery and did not believe her denial, so he prepared a smoke to the sun. And just as he was about to pronounce the fatal words, his wife broke in.

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"You are going to make smoke. You want to kill me," she expostulated.

[8] Some Comanches evaded repeating this oath to us for fear of its dangerous implications.

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went over to her mother and told her what had happened. It would be a good time to get that other doctor right away, he said, because the woman's husband was on the war path and would not know about it. The mother agreed and they went to see the other doctor.

"This medicine man considered the matter and then said that he could cure her. He told them it was good they came while the trouble was yet in the early stages, for it would be incurable later on. If they wanted the cure done, he told them there were two choices. Either they would have to sacrifice someone else in the family, or else provide eight horses to be killed, for he could not stop the disease; he could only shift it to something else. He said he would prefer horses because he would rather not take the life of a human being. They agreed it should be horses. They went away and the medicine man worked up his power and performed his ritual. Before long the band broke camp and moved. This happened before the husband had returned from the war path. While they were driving the eight horses along, one of them suddenly dropped dead. They left him lying, and before long another one collapsed. Before they got to the next camp-site every one of the eight horses had fallen, one after the other.

"Then the mother and daughter rejoiced, for the doctor told them that if the horses did not die, it was a sign that he could not cure her of the curse which was upon her. Payment, he had said, could be in anything except horses. When the husband returned from the raid they told him how they had broken camp and lost eight horses on the trip, though no one knew how it had happened. That was all the deluded husband ever knew."

Indeed, as Professor Malinowski has so cogently shown for the Trobriand Islanders, "a supernatural sanction need not guard a rule of conduct with automatic effect."[10]

On the other hand, there were other ways in which resourceful husbands who had the proper medicine could lay a sorcery trap to catch an erring wife. How frequently this was done we do not know. From all accounts it was not very necessary, for all Comanches will gravely assure you that medicine men did not have much trouble with their wives. The women were afraid of the powers of such especially endowed spouses and decorously controlled their behavior accordingly. Even so, a case not without its humor was recorded, and is told with great relish by the Indians.

Case 31. Adultery
Informant: That's It

"There was a medicine man who had three wives, sisters to one another. He was suspicious of the actions of his favorite wife, who was the eldest. This man wanted to go to the Smoke Lodge for the evening, but would not trust that wife, so he put an arrow with medicine powers under the bed, and left.

[10] B. Malinowski, *Crime and Custom*, p. 81.

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"When he came home after the smoking was done, he found two people in the bed. One was his wife, and the other a young brave. The brave asked the pardon of the medicine man. What could he do? He was in the uncomfortable circumstances of being unable to separate from his paramour. He wildly offered the husband anything that might be required for his release.

"The husband turned on his heel and went outside. He got a switch. With this in his hand he entered the tipi again and gave the lovers a thorough dusting. After a while he wanted to go to bed. But the pair was still lying there, unable to get loose. So, calling on another of his wives, the medicine man ordered her to help him drag the luckless lovers outside the tipi. He pulling on the man, the wife upon the woman, they dumped the couple on the ground and left them.

"When morning came the parents of the young brave were about to move camp and became concerned with their boy's absence. Scouring through the camp to find him, they came upon their youth—attached still to the woman just as the irate husband had left them. Seeing this, the boy's father went to the medicine man and begged him to set the youth free.

"The husband refused. He said he loved his wife and he wanted her to get enough of it.

"Finding his own entreaties of no avail, the father went to some warriors of great influence and begged them to intercede. They went to the medicine man and offered him anything he might want to withdraw the charm. After this representation the medicine man consented; he went into the tipi and pulled the arrow out from under the bed. With this the pair got loose from each other.

"The father of the youth paid heavy damages to the medicine man, and that settled that part of the case.

"Then the father of the guilty wife came to plead for his daughter, that she wouldn't get cut up or killed by her husband. He offered his son-in-law gifts and begged him not to hurt his child. He suggested that since she was guilty, it would be well to make her the slave of the other two wives, but he would not like to see her injured. The medicine man refused the gift from his father-in-law, but agreed to keep the woman, though she could no longer be his favorite wife. Thereafter she had to be a slave in his household to her younger sisters."

Here is a father begging his son-in-law not to harm his daughter. Propitiatory gifts are offered! As was noted in the discussion of murder, the title to a woman passed completely to the husband on marriage. That he refused the gift and yet observed the father's wish seems merely to indicate the nobility of the husband in the case.

ORDEAL

Conditional curse is closely akin to ordeal. In view of the wide spread of ordeal in the Old World and its peculiar usefulness in law, its general neglect by the American Indians is unique. Yet neglect need not mean

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absence. The Comanches knew the conditional curse for adultery and sorcery cases, and also had ordeal. They made no legal use of the latter; the former was not extended into general legal practice. This is more notable than the *absence* of either procedure. Nothing could more interestingly evidence the inertia in the way of diffusion or further adaptation of institutions *within* a single culture.

Papítsoin may be best called a joking ordeal. In the presence of others a joker (who could be anybody so long as his relationship to the butt of the joke did not demand avoidance) addressed another person of either sex. In an off-hand manner the remark would be dropped, "Well, and so I hear you have been having intercourse with So-and-so."

The usual reaction was indignant denial. If so, the joker picked up a bit of dirt between the fore-fingers and sprinkled it on the hair of his victim. This done, were the victim guilty of the sex conduct charged, the loss of all hair was supposed to result, and the victim would appear ridiculous in the eyes of all people. Or even more terrifying, if the jokester placed the dirt upon the tongue of the victim, guilt would be proved in loss of speech.

This is a practice which lives today and causes much mirth for the onlookers and terror for the party accused. In the summer of 1933 Skinny And Wrinkled told with great gusto how he had seen a woman running down the main streets of Lawton, Oklahoma, speeding as though pursued by the Holy Terror, which was in fact no more than a laughing young Indian with a pinch of dust between his fingers.

Non-submission to the test proves guilt even as does submission and the occurrence of the unfortunate consequences. This is ordeal in all its aspects of a supernatural test save the solemn setting and the presence of a dispute of interest-importance to the disputants. One would expect that in the event the victim of the joke were a married woman, and found guilty, her husband would perforce institute proceedings against the adulterer. Nevertheless, the assurance of informants is that it was never used seriously, a statement which is substantiated by the complete absence of any ordeal practices in the case histories of disputes which were collected.[11]

OATH

In the Buffalo Tongue Ceremony,[12] a very definite immunity from legal consequences for an unfaithful wife was observed. After a big hunt the

[11] The joking ordeal was unknown to the Shoshone. Its counterpart was found among the Cheyennes. This indicates a late acquisition for the Comanches.

[12] This ceremony is lifted from the sun-dance complex of other tribes. Its rarity among the Comanches is attested by the fact that no mention of its practice was made by informants used by the laboratory group. Dr. Mirsky recorded it independently.

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tongues were collected and roasted by the women. When they were cooked and taken from the fire to be cleaned, men and women lined up and started dancing. When they stopped, all was ready. Then a war leader called for a virtuous woman to come forth to cut the tongue—not a virgin, but a wife who had never betrayed her husband. The leader warned the husbands that if their wives stepped forward and were disqualified they must not get angry or punish them.

The men were in one group; the women in another. There was silence and embarrassment when the call to come forward was given. At last one bolder than the rest stepped out. From the group of men could come an anonymous voice. "Go back!" It would be the command of a secret lover. The woman obeyed, for the leader had announced that if any unfaithful wife was permitted to cut the tongue, she would die. One woman after another would make the try and be sent back by her lovers, until finally one came forth who stood the test. To her the knife was given; she cut the tongue amidst the *"li-li-li-li"* (cry of applause) of the other women. One informant said that this ceremony was used to bring success to a large war party before it set out. If a virtuous woman did the cutting, success was theirs. If an unfaithful wife were to do it, they would meet disaster. As she interpreted it, lovers revealed their secrets because it was their duty to safeguard their fellow-warriors' lives. Because it was a religious ceremony under the patronage of the supernatural, women were safe from their husbands when their lovers told on them. No one ever heard of a husband molesting his wife for being found out in this test.

To complete the record of the supernatural relations to evidence and law an account of oaths as used by the Comanches in certain non-litigational situations is needed.

Among the Comanches unwitnessed deeds had to be verified by a simple ritual *ex parte* statement (akin to affidavit) before they were first recounted publicly. When a lone scout returned from his reconnaissance, he rode into the camp and scattered a pile of buffalo chips which the waiting warriors had placed before them. This guaranteed the truth of his statements. If the scout had killed a man, he rode directly to the pile and ran his spear through a chip for each man killed. With each chip speared, he cried, "*ahé*" ("I have claimed it.")

A Comanche adventure with the Utes shows the efficacy of the buffalo chip ritual (accompanied, here too, by tangible evidence), for even in the face of some skepticism, the story had to be accepted on the basis of the manure test (and the horse and woman taken). The Victory Dance was even given to celebrate the feat.

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RAPE

Rape was an act beyond the pale of normal conduct. It, too, was of infrequent occurrence and not part of the general pattern. Sex relations were so free that there seems to have been little cause for rape.

Case 35. Rape: Blow it Away
Informant: Holding Her Sunshade

"Blow It Away was a chronic offender. He was not favored by the women and was generally avoided by them. He made up for this by attempting surreptitious night unions with women in their tipis. He would sneak in and try to arouse them to desire. He never had much success. Then, too, he would attempt to rape such women as he found alone away from the camp. These attacks he would make in the daytime and in these he was usually successful. No one ever caught him attacking a married woman, so he was never called to account by a husband. But one night he tried his night-stealing on a large married woman and she broke him.

"The woman awoke to find Blow It Away feeling her. She struggled with him; then she got him down. Holding him to the ground, she ripped his breech clout from his loins and grabbed his penis. She was starting to drag him from the tipi when her son awoke and saw them. Her boy begged her not to do that to the man, but the mother was going to teach that nuisance a lesson. Holding him as she had him, she dragged Blow It Away through the door out into the open spaces between the tipis where all the people could see him.

"This was the first time anyone took action against him. It was the last time he tried to force himself on a woman."

This is shaming par excellence, plus a very painful conditioning.

Sleep-crawling by either boy or girl was legitimate if the recipient did not object to quiet night visits. Thus, it was out of the category of abnormal conduct.

THEFT

Theft was so unusual that no provision was made for it in the legal scheme. Consequently it must fall into the vague class of unapproved abnormal acts which were outside the scope of law. One informant after another avowed that it never happened within the tribe. No clear cut cases of theft under aboriginal conditions were recorded.

GRAVE ROBBERY

In recent years the Comanches have been considerably annoyed by ghouls. The ancient custom of burying a person's individual belongings with him and of throwing articles of value into the grave with the body persists today. Predatory whites have been given to exhuming bodies to strip them of whatever valuables might be found. The grave of the son of a certain rich

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across the face with his quirt. He'd never been whipped. He got to thinking about it, so he got out his gun and shot himself. The people didn't know why he did it, and suggested things out of the way. Sometimes when Indians go on a raid they catch a disease and commit suicide because they don't want to go back that way. This man was a brave warrior; he had killed lots of enemies; he had power." 762

Among the Comanches a sense of the injustice of a formally justifiable act at times took the form of a protest-suicide. Or perhaps it might be released in some retaliatory act, such as killing a favorite horse or mutilating the good-looking sister of the man who had pushed the law too far. A boyhood prank of Gets To Be A Middle-Aged Man produced these double repercussions of incensed reactions to an over-strict legal settlement. 681 762

Case 37. Adultery and Retaliations
Informant: Gets To Be A Middle-Aged Man 684 882 689

"I was down by the creek one day with a friend when a woman came down for water. She was the sister of my friend's step-mother. I proposed that we seek intercourse with her. My friend agreed. So I went over to make the proposition to the woman. She was quite willing, provided that we would wait until she had taken the bucket of water back to camp. On her return I met her first, as I had demanded the first chance. While we were together there, her sister (my friend's step-mother) saw us, but she slipped quietly into the brush and said nothing. When my friend had his turn, his step-mother again spied and saw them together. She went right away to her sister's husband and informed him of his wife's doings with us.

"The man came to my father's tipi. He told him what had happened. 'What do you intend to do about it?' he asked my father.

"We were called in and he blamed us both with adultery. I denied any contact with the wife, but when my friend was charged he boasted, 'Sure I did it. It's an honor to be able to do such a thing as that.' The husband demanded damages, and when he received two good horses from my father, he departed satisfied.

"Then my elder brother came home from a raid and heard that two horses had been given because of our activity. He was angry. He took his bow and arrow and shot two horses dead in the herd of the woman's husband.

"Nothing further happened at that time. But then the younger brother of the husband came back from a raid and heard the story. He was angry that the two horses had been shot. Thinking that his older brother had been ill-treated all around, he went over and cut off the nose of my friend's beautiful sister.'

The whole difficulty generated from the fact that the wrong-doers were youths. Adultery does give cause for suit for damages, but boys were always in a favored position and indulgence should have been shown them.

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684 Gets To Be A Middle-Aged Man denied his guilt and nothing happened.
887 The other boy boasted, aggravating the situation. The elder brother, how-
689 ever, would not be imposed upon. To him it was lack of good taste and fairness for the old man to take two horses; hence his summary retaliation. The collaterals to the other party reacted in turn to this action as indecently harsh. They retaliated with mutilation of the sister. This last retaliation should not be confused with the principle of group liability (i.e., that the sister paid because she shared the responsibility). It was rather that the sister belonged to the brother and, as a good-looking girl, had value to him. Spoiling her visage was like mutilating his horse (possibly more so).

689 So too in the murder case (pp. 66–67 above) in which a war leader was slain for killing the two fat horses which had been offered him in compensation for one fat horse of his which had been eaten without his permission. The horses were his by acknowledged agreement. But that the chief should so scornfully kill them was too much for the other party. It was an insult to a man who had sought to do right. Though the killing was undertaken by one man and his captive, yet the entire group acquiesced, making no effort to dissuade him. Their inaction showed at least passive approval.

It appears that one should not press his bald legal rights too far. Too much pressure under the wrong circumstances generated the same type of back-fire which in recent decades has troubled modern Continental lawyers with the concept of "abuse of rights."

689 The sharpest back-fire in such situations was in protest-suicide. Witness
762 the action of a disowned mother, who was rightfully denied by the son she had deserted.

Case 38. Suicide
Informant: That's It

"This woman was widowed with her four-year-old son. The band was moving camp and she had her boy tied in his little saddle on a pony. They were straggling along so much that they dropped behind the other people. A young man dropped back and proposed to the mother that they run off and marry. She agreed to that. But they did not want to be bothered with the child, so they tied his horse to a tree in the midst of a grove and left him there to starve.

"Later on some hunters, who were out after a bob-cat, came to the grove. One hunter said to the others, 'There's a horse standing over there.' The group went into the grove and saw the boy sleeping. They watched him. Some said they should wake him up. They woke him up and asked about his mother. He didn't know, but he told them the direction she had gone. The hunters followed the trail and came up to the main band. The mother was not there, so the boy was taken by his grandfather and raised to manhood, and got married.

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●684 762 who had been out hunting, returned with meat at the same time they arrived in camp. The next morning at breakfast both Rocky Creek and Thunder asked their sister to add some more fat to their meat. 'I did not endanger my life on the hunt in order that you should enjoy the best of it all,' their brother-in-law muttered. When he said this mean thing, Thunder pushed his meat aside.

"'Sister,' he requested, 'take this food away.' She obeyed him. The brothers washed their hands; Thunder motioned to the door, 'Come,' he said to Rocky Creek, 'let us go outside.'

"They left the camp to go up into the mountains; there they stayed all day even though it was winter. Towards evening another young man came along. He hailed them. 'What is the meaning of this? Why are you here? I know you have been here since early morning.'

"Thunder answered him, 'We are just thinking things over.'

"'What things?' the stranger asked.

"'I have no father or mother,' Thunder replied. 'There is only one thing left for me. Tomorrow I start out to seek death.'

"'Where then?'

"'In the white man's territory. I shall probably not return from there either.'

"The stranger said he would join them.

"As they started slowly on their way, they were met by several others in the same plight—young men without a place to go—tákapana. They travelled for days and days. Then they were being trailed by some soldiers who were led by an Indian scout. The young men stopped and killed some cattle for meat which they carried into a ravine to cook. Just as they sat ready to eat, one saw a cloud of dust. 'It is a whirlwind, I think,' he remarked to the others.

"'No,' said another. 'It is the soldiers on our trail.'

"Thunder spoke up then. 'Listen to me, brothers,' he commanded. 'Those of you who care to can still escape. Go now! I stay here. Here by this fire, for I have come seeking this very thing.'

"They waited. The soldiers were upon them. Here and there a man was picked off as the firing began. Rocky Creek approached his brother. 'I am shot,' he said. 'A bullet has wounded me.'

"'You can still escape. There is a way out down the creek. Go! But I am staying.'

"'Brother, come with me,' Rocky Creek pleaded.

"Thunder only answered, 'I am not leaving our fire.' The guns rattled on.

"By noon all the tákapana save one were dead. The firing ceased. Of all the young men this one alone lived to tell the story of what had happened to this homeless group.

"The brother-in-law who had begrudged food to his wife's brothers was an exception. When he acted so, it wounded their prides so that they went out to seek death. Many young men in the same circumstances courted death at enemy hands."

[558] So, too, did lovers who had lost face when a braver husband forced them to give up a stolen woman. Cases will be remembered from previous sections.

3:Wallace & Hoebel E-4, 5 (1933, 1945) 1952
NO6 Comanche NO6

meet him secretly, or her real husband will be angry." It was also expected that when a man was on the warpath, his brother could sleep with his wife. If all the brothers were out on a raid, the wives were sent to stay with their husbands' sisters. In wife-exchange the rights of the husband were fully recognized, and he was compensated for restraining his jealousy partly by social approval of his generosity, partly by his expectation of a return in kind. So strong was the idea that brothers share a wife that it logically followed that men who had sexual relations with a married woman were, in a formal sense, brothers. So it was that an outraged husband prosecuting an adulterer, demanding heavy damages, nevertheless addressed the man who had cuckolded him as "brother."

This practice indicates that brothers with their sisters formed a marriage group, which established relationships with another marriage group on the basis of inter-family exchange marriage. Although individual marriages took place between the members of the two groups (no group marriage), there was a projection of the marital rights of each member of the group to all its members of the same sex —in the present through sororal polygyny and fraternal polyandry (anticipatory levirate); in futurity through the sororate and levirate. One's father and the father's brothers were thus equated in the kinship system as *ap'*, because they were actual or potential mates to one's mother under polyandry or the levirate. One's mother and her sisters were equated as *pia*, because they were actual or potential mates to one's father as members of the same marriage group. A man called his brother's child his own (*tua*, "son," or *bet*, "daughter"), since they were descendants of his marriage group, but he terminologically distinguished his sisters' children, *ata*, because they were in another marriage group. Likewise, a woman called her sister's child "son" or "daughter" but distinguished her brother's child, *paha*. A woman who lost her husband by death was inherited by a brother of her husband. Thus brothers were potential husbands of a woman whether they ever became such in actuality. Hence, there was no separate word for brother-in-law, only *kumaxp*, "husband."

The marriage of a man to the daughter of his deceased wife's brother was not a standard Comanche practice; the custom is usually found only in societies that have patrilineal clans in which the wife's

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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to push the process to its conclusion, or nothing would be done at all to provide relief or redress.

Nevertheless, a system of law it was. It was absolutely sure that certain forms of wrongs would be prosecuted. There were proper procedural patterns to be followed in the prosecution of a case. There were quite specifically understood sanctions to be applied to the different categories of offenses. And if the defendant was adamant beyond the point of reasonableness, he was, after due process, subject to a violent attack upon his person.

The essence of law, whatever specific forms it may take from one social system to another, comprises regularity, force, and official authority. Comanche law-ways had all those essential attributes.

"Dot" Babb's statement that on the whole there was little infringement on the rights of others among the Comanches, that they did not fight, quarrel, and commit murder as did the white man,[11] is contrary to the facts as we know them. The Comanches were most litigious, not, it is true, from any love of going to law for the savor of it, but because they were extreme individualists given to crowding each other in the unceasing struggle to outrank each other in personal prestige. A man could climb the social ladder by piling up a war record at the expense of enemies, and this was the legitimate way. But he could also reach toward his goal by aggressively challenging the status of a rival through stealing his wife, or seducing her, or taking his horse. This was the illegitimate way. It was illegal, but it was also customary enough. Forty-five cases of old-time legal actions arising from adultery and wife stealing alone were recorded from Comanche informants by one of the authors in his study of Comanche law-ways. Of these, twenty-two were wife-absconding cases and twenty-three were cases of simple adultery.

If the Comanches were lawless, it was not through an absence of law, but rather because of a reckless tendency to break the law in the face of certain and severe penalties. Seven of the forty-five erring wives paid the death penalty: four for running off with another man, three for committing adultery. Of the remaining twenty adulteresses, five were mutilated by their husbands: four had the tips of their noses cut off and one had the soles of her feet slashed so that she could not

[11] Babb, *op. cit.*, 102–104.

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684 walk. A cut nose was a social disgrace which was extremely difficult to live down. However, since these public marks had a tendency to decrease the value of a woman should the husband transfer her to another man, erring wives were not always disfigured. Nevertheless, Colonel Dodge reported seeing one Comanche woman with four separate gashes in her nasal organ,[12] while Kills Something claims to have known a woman with five. These were all legal penalties which it was the privilege-right of the husband to impose.

As for the offending male correspondent, in every case save four, he had, in conformity to law and custom, to pay damages to the husband. Comanche law required the aggrieved husband to prosecute. Public opinion forced him to, for if he held back, he would stand as a lily-livered coward before all The People. No man risked that. Thus, although the aggrieved husband was in fact prosecuting a wrong against himself, he was also put in a position of maintaining the public standards, whether he wanted to or not. He was in a sense a public prosecutor as well as the protector of his own private interests.

627 681 The payment of damages loomed so large in the interests of the Comanches that they coined a word for it—*nanɛwɔkɔ*. Such settlements were ideologically in sets of four different kinds of articles: horses, guns, blankets, and clothing. More often than not, they were paid only in horses, numbering from one to ten. Almost inevitably the demands of the husband, if he was a warrior of any consequence, included the favorite horse of the defendant as essential to his satisfaction. His personal prestige had been hurt by the affront, and it was his intent to re-establish it by forcing the aggressor into the humility of giving up that which was most dear to him. It was more than a "money" equivalent that was sought, for it was all part of a prestige battle.

627 In initiating the procedure, since there were no courts or assizes to be waited upon, action could be instituted at any time. The case was carried to the offender wherever he could be found. The aggrieved could prosecute by accosting the defendant himself, stating the offense and the amount of damages necessary to satisfy him; he might send a third party to prosecute for him; or he might send or accompany a group who stated the charges and then negotiated.

[12] R. I. Dodge, *The Plains of the Great West*, 304.

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627 Although it was unusual to resort to fighting and killing over the loss of a woman, society theoretically recognized the right of the offended male to take the life of the offender if he refused to make settlement after guilt was established.

Should the accused deny his guilt, either party might appeal to the supernatural powers as a way out. When accused by an irate husband, one informant denied that he "had broken the law." His accuser proposed that they make smoke and call on the Sun. The informant smoked and then addressed the Sun: "Sun, if what I say is not true, strike me dead. If I am not guilty, strike my accuser dead." When he heard these words, the accuser withdrew his charges and thereby ended the whole affair.[18]

It was, as we have already noted, incumbent upon the husband to seek damages. If he demanded damages and received a satisfactory settlement, his claim upon his wife could be released, thus making legal a divorce and consequently freeing her to change her marital status. In case of divorce or separation, the children legally remained with their father. In many cases the husband took the wife back.

[587 A woman who remarried after the death of her husband without first getting a verbal, but formal, quit-claim from her husband's
● 684] youngest brother was technically guilty of desertion; her new husband was subject to *nanɛwɔkɔ* demands, and he had to pay up.

Breaks Something was the unwitting victim of such an action, as his own account shows.

« « « Mexican was a friend of Touched with a Closed Fist. They called each other brother. When Touched with a Closed Fist died a long time ago, Mexican went to claim the widow for his wife. That was Woman. Woman didn't want to live with him, so she came to me.

We were living down at Red Store when one day two men came to see me. They were Mangy Coat and Atsaci. We talked, and then they said they had come to get damages for Woman. I was surprised. I asked them which one of them had a claim on her.

They answered, "We have come to you from Mexican. He was the brother of Touched with a Closed Fist and this woman is his wife."

[18] Informant: Kills Something.

7: Richardson D-4 (no date) 1929
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622 became demoralized through contact with the white race and the desperate struggle for existence this brought about, the chiefs exercised more authority.[15] Cases of the formal arraignment and
622 trial of a warrior or chief, were exceedingly rare, if such ever
627 occurred; for the writer has never discovered a well authenticated record of such a procedure. A chief or leading brave might lash
[578] a boy or woman, but to strike another brave or chief generally meant a feud or civil war. Differences between tribesmen were settled by those directly concerned or by the relatives of the slain party. Of course, the law of an eye for an eye prevailed, but generally the heart of the offended party could be softened by judicious gifts. Generally the chiefs could make the men behave while they were in their presence and most men followed the admonition of their elders and leaders as a matter of course.

595 Polygamy was common, but before the advent of the white race
● 684 and its demoralizing influence on the savages the chastity of Comanche women rated high. During the period of Anglo-American relations it was not uncommon for a woman to run away from her husband in company with a spouse more to her liking. Traditional Comanche law provided that in such cases the offended husband might punish the woman by cutting off her nose, but this horrible practice was not always followed. In at least some cases the husband took back his erring spouse and rejoiced in his good fortune at being able to recover her.

221 For sustenance the Comanches depended almost entirely on game,
224 particularly the buffalo. These animals were generally hunted on horseback and brought down with the lance or shot with arrows at close range. Dependable authorities state that at times the Indians would drive the arrows completely through the carcass of the animal.[16] The natural tendency was for the bands to follow the buffaloes in their northward and southward migration, which practice made a sedentary existence impossible. At certain seasons, when the animals were fat, the hunt became a tribal affair and the slaughter of the great beasts took the shape of a cooperative

15. It is Mooney's opinion that the authority of the Kiowa chiefs suffered a sharp decline as a result of the advent of the white race and it is likely that the same thing occurred among the Comanches. See the Kiowa Indian Calendar, as cited, 233.

16. See Marcy, Exploration of Red River, as cited, 98.

9: Gladwin E-5 (1940) 1948 NO6 Comanche NO6

though this was not invariable. There was apparently no ceremony connected with adoption.

An illegitimate child was a great shame to all members of the family, and especially to the girl's brother, whose prestige was to some extent a reflection of that of his family. It was usually brought up by the girl's mother, whom it would call mother. Some pressure was put on the boy by the girl's parents to marry her, but he could not be forced to do so. The girl's family referred to him teknonymously, but his family apparently did not recognize the relationship at all. Her marriage possibilities were somewhat reduced by this unfortunate happening, and she might well become only a secondary wife of some older man.

Twins were not wanted, and were generally considered a danger to the mother, as well as to all her blood kin to a lesser degree. This was especially true as they grew up, suggesting the effects of the gradual emergence of the child's personality discussed above. Some women, with the assistance of powerful names for the children, disregarded this belief and raised them together, but others disposed of the younger twin. If some woman did not come and offer to take one, it might be laid outside the tipi somewhere, where someone invariably came to get it. The mother attempted to forget it. If one twin died, all the clothing and other things which had been prepared for it were buried with it, and the mother or her sister made a round of the camp collecting what was offered in the way of other clothes.

Among the parents' siblings, there is a definite emphasis on the mother's side. The mother's sisters were apt also to be married to one's father and, even if not, were usually around the family helping if possible. The mother's brother is also considered to be a source of guidance, assistance, and favors of fairly major proportions; it is significant that he, also, is permitted to give away a girl in marriage. As usual, behavior toward more distant parents, aunts and uncles depends on personality and propinquity; whether or not they have any children of their own is also often of importance. TY's father remained with her mother's family to marry two more sisters, so that she was brought up in the midst of a great number of maternal relatives. The members of this extended family were rather strikingly unprolific, so that she had very few even distant siblings; as a result she received a great deal of attention and an almost continuous stream of extremely valuable gifts from all her parents, aunts and uncles, even though related in very roundabout ways. Her younger brother, incidentally, became a favorite child according to the best institutionalized patterns.

Husband-Wife. Wives were very clearly dominated by their warrior-husbands, and acceded to their wishes in all matters, including the treatment of children. Men could, and often would, beat their wives on any pretext they chose, while a wife's infidelity frequently led to extremely harsh treatment,

9: Gladwin E-5 (1940) 1948 NO6 Comanche NO6

593 including beating, gashing with a knife, and even cutting off her nose. How-
684 ever, in the first years of marriage, at least, a girl's parents, or her brother, could take her back and break up the marriage, especially if they had been instrumental in arranging it in the first place. This might lead to a damage suit by the deprived husband, particularly if she were to marry another man fairly soon; he would often collect from both father and brother, thereby asserting his rights over the woman even if he had not treated her properly.

593 Men were not expected to be as faithful as their wives and there was not much that the latter could do about it. However, it is interesting to observe
586 that one of the reasons given for a man leaving his wife was in order to avoid a scene resulting from her jealousy. Other grounds for desertion were incompatibility, and the fact that a woman was a poor housekeeper, though this latter difficulty might be circumvented, if the woman was otherwise desirable, by taking on another, younger wife to do the work. It is significant, in connection with the comparative lack of regard for children mentioned above, that one informant questioned on the subject specifically denied that barrenness on the part of a wife was considered a valid excuse for leaving her. Marriage, on the whole, was a rather brittle relationship; divorces were strikingly frequent.

595 If there were several wives, one was usually considered the favorite, though this was not necessarily the one the man had married first. She did much less work, bossed the household, and was much more intimate with her husband.
[482] When traveling, it was she who always carried her husband's shield, while the others tended the pack animals that carried the greasy meat which would have impaired the husband's power. If she were menstruating, incidentally, he
[841] carried the shield himself. While the favorite wife occupied an obviously su-
[684] perior position, and was much less liable to be punished for any misdemeanors, it was in keeping with her position as a more primarily sexual partner that adulterous lapses on her part were much more severely punished, even to the point of death.

Polygynous households usually occupied at least two tipis. The secondary wives lived in one main tipi; the favorite wife might also live here, and visit her husband more frequently in his private tipi, or she might actually live separately with him, though the dwellings were, or course, adjacent to each other. The children lived in the main tipi with the wives; the favorite wife usually was permitted to have her mother living here too, even if the whole family were not already living with her parents. This allowed the wife more free time to be a companion to her husband. If a secondary wife had a different mother she might occasionally also get her in, but two grandmothers seem to have been the limit. The tipi usually contained only three beds, one of which (to the North—the door was to the East) was for the man of the family, and another might have to be vacated in favor of a visitor at any time, so the women could not afford to gather in too large numbers.

21: Burnet T-5 (1818- 819) 1954 NO6 Comanche NO6
Texas

[ca. 1818]

auxiliary to an otherwise impotent authority. The pains and penalties of their criminal laws, are confined almost exclusively to the weaker sex. The incontinence of a wife, is punished by cutting off her nose. This odious abscission is made from the junction of the cartilage and bond, obliquely down to the lip. Several instances of this shocking penal infliction are now extant. But the sentence of mutilation is sometimes remitted in consequence of the interposition of male connections. The decisions of the law always yield to a determined resistance.

If one man wantonly kills another, the nearest friend of the deceased, is permitted, and indeed it devolves upon him as a duty, to revenge his death, by taking the life of the murderer. But the price of blood, may be commuted for articles of more value and convenience than blood, and murder may be atoned for, and the spirit of revenge appeased by liberal donations to the living relatives of the deceased. Such atrocities however, seldom occur. Notwithstanding the extreme laxity of their whole economy of government, and their entire exemption from legal restraint, they live together with a degree of harmony that would do credit to the most refined and best organized societies. The little bickerings and jealousies and inordinate strivings for thrift and distinction, that disquiet and mar the social circles of refinement, are unknown to the rude and simple children of nature.

The Comanchee system of religion is about as perfect and luminous as that of their jurisprudence. They believe in a Supreme Being, and in a future state of existence, but have adopted no mode or manner of worship. Indeed they consider the Supreme Being, to be so far removed from them as not to wish to interfere directly, in their temporal concerns, and as equally unwilling to be interfered with. They therefore leave him to enjoy his repose without molestation, and expect the same indulgence for themselves. They have no idea of a special superintending Providence, or that the Great Spirit takes any particular cognizance of the actions of men. And they consequently defer all their devotional concerns, if indeed they entertain any, to a dark futurity,

22: Dacus Q-3 (no late) 1960 NO6 Comanche NO6
(ca. 1870)

[ca. 1870]

and he may mutilate or beat her to the full extent of his capricious will. 593
In certain cases he is even permitted to take her life, without acknowledging responsibility to any one for his conduct. As among civilized people, 684
there are "common women of the tribe," outcasts from respectable Comanche society, just as there are outcasts from Christian society among the civilized people of Europe and America. These "Women" have no rights which Comanche ladies and gentlemen are bound to respect. The condition of slavery, which falls to the lot of all women of the tribe, is intensified in the case of the fallen. The others are slaves of one master only; these have many masters and many mistresses. According to our code of morals, the Comanche cyprian has been guilty of no crime, which all the females of the tribe who have arrived at the age of puberty have not committed. She has been unfaithful to the marriage contract, without consulting the wishes of her husband, and without bringing him any gain, and terribly is she made to suffer for it. She is beaten, with many stripes, [304]
and not infrequently suffers mutilation by having her nose cut off. This fixes the brand of her disgrace; and henceforth she becomes the slave of the tribe. There may always be seen a few of these miserable creatures about a Comanche camp. The women are especially cruel toward them, and take much apparent delight in beating them. And yet these same immaculate maidens and matrons have not once, but many times been made to endure the embrace of any purchaser at the behest of their husbands and fathers.

Custom has established laws among the Comanches as among more civil- 671
ized people. It is a law among them that a wife may be mutilated, or even 593
killed, for the crime of infidelity, and yet husband is not averse to select- 684
ing any number of lovers for her and compelling her to accept them, pro- 837
vided his worldly fortune is advanced thereby.

There is no prudish seclusion of Comanche maidens. They mingle with 834
great freedom among the people of their tribe. They may have their 584
beaux as well as their white sisters, and the gallants need have no fears of an over-prudent papa, or an irate "big brother." If there is a rough place in the course of the stream of affection, it is not the youth but the maiden that must suffer the castigation. A pony will suffice to satisfy the utmost requirements of the social law.

When a young Comanche gentleman takes it into his head to go a-wooing, 584
he decks himself with a profusion of paint, a gorgeous head-piece made 301
of feathers; dons his finest suit, puts on all the decorations of distinction 291
which he is entitled to wear, which usually consist of a necklace of wild- 237
cats' claws, coyotes' tails, the canine teeth of wolves, elks' teeth, and not

22: Dacus Q-3 (no date) 1960 N06 Comanche N06
(ca. 1870)

622 624 554 authority is measured by the amount of wealth he may possess and his reputation for courage and skill in war.

624 701 The authority of their war-chiefs often terminates at the conclusion of a single expedition, their official term expiring by limitation.

623 Once a year they have a general council, at which they settle disputes between rival warriors, make regulations and discuss matters pertaining to the welfare of the people. In this council all warriors are entitled to [622] participate, which means, all the grown up men of the tribe. Occasionally a warrior of great wealth, that is the owner of many ponies, and of great personal prowess, will exercise a sort of chieftaincy for many years together. But such instances are rare.

623 203 The council frame certain rules, sanctioned by custom, and not in contravention to the will of the majority, and these are proclaimed by a chief man, who rides among the lodges, pausing at convenient points to recite the law in the hearing of all the people.

673 685 684 Theft, adultery and murder are the cardinal crimes, and for the punishment of these offences, custom has established precedents which have all the authority of a written code. For the first, the offender may satisfy justice by restitution and additional gifts. The second is a crime which, according to Comanche law, men are incapable of committing. The woman guilty of this offense may be punished by castigation, mutilation, or the infliction of the death penalty, at the will of the husband. Her paramour, 682 however, if disposed, can placate the husband by presents. For murder, the penalty is death. The friends and relatives of the victim would disgrace themselves by compounding the felony. They are constituted the avengers, and invariably put to death the criminal, if they can find him. 673 These are about all the offenses cognizable by the Comanche code.

538 THE COMANCHES ARE GREAT STORY-TELLERS. In the mild autumn evenings they gather about the lodges in groups of five or six, and each one endeavors to surpass the others in marvelous stories, either of his own 538 adventures or those of some other person. They have a series of fables, probably obtained from the Spanish Jesuit missionaries, who it is known 177 visited them almost two centuries ago, which they term the "Talks of the [797] Liar." The Comanche name for liar is *esop*, which considering the striking [175] similarity between the "Talks of the *Esop*-Liar," and the fables of the Greek confirms me in the opinion that a majority of the lodge-fire stories of the Comanches are but modified versions of the fables familiar to every school-boy who is set to learn another language than his own. In these fables the fawn is substituted for the lamb, the bear for the lion, the coyote

24: Richardson H-4 (no date) 1929 NO6 Comanche NO6
(1854-1859) Texas

The health of the Indians was not always good. Veneral diseases were virulent and common and there was not sufficient medicines and doctors. Typhoid pneumonia is mentioned among the diseases reported by the doctor who occasionally attended the patients.[20]

The reservation farmer had his troubles also. The Indians would turn their horses into the corn field, or turn them loose where it was evident that they would get in the field. They would pull melons no larger than an egg and were want to consume all their corn before it had grown to good roasting-ears. In the spring of the second year they refused for some time to plant their crops until they had been given presents, but finally the agent persuaded them to go to work without the presents.

Sometimes there was violence unto death. A chief engaged in intrigue with another man's wife and, according to custom, the injured man demanded that the chief compensate him to the amount of a horse. When the chief refused or hesitated to do this he was slain at once by the sons of the injured man. Then the father and his sons together with their women and children fled from the reservation and were not overtaken, although a scouting party followed them for a hundred and fifty miles.[21]

And yet, notwithstanding these evidences of savage crudeness, it must be said that at least some of the Indians were making progress toward a more civilized existence. Under the direction of the reservation farmer they worked and occasionally made fairly good crops, but the amount of land in cultivation was small. In 1857, they made but fifty bushels of wheat off of the twenty acres sown and 500 bushels of corn was produced on the remainder of their land in cultivation. For awhile the Indians were prone to rely too much on their prisoners to do the work but after these were freed and returned to their people in Mexico that abuse was corrected. In 1858, the reserve farmer reported a better yield. In the spring of that year he had divided the community fields into six divisions in order that each of the prominent clans might have a parcel of ground suited to its numbers. He thought that they would have made enough grain (principally corn) that year to

20. J. Shirley, bill for medical services, March 29, 1853. Ms. University of Texas photostat copy. Neighbors to Montgomery, March 7, 1854. Ibid.
21. Leeper to Neighbors, April 9, 1858, Ibid.

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

ambiguity of powers of the chieftains, it is not surprising that in this tribe there were no public officials endowed with law-speaking or law-enforcing authority. The law of the Comanche was neither legislative nor judge-made. It was, as we have written elsewhere, "hammered out on the hard anvil of individual cases by claimant and defendant pressing the issues in terms of Comanche notions of individual rights and tribal standards of right conduct."[3] Thus it was almost exclusively a system of private law: a system of individual responsibility and individual action; a law that was case made.

The Comanches surely had no love of legalistic formalism, but they were a most litigious people. Their way of life engendered considerable internal friction. It might almost be said that the Comanches savored trouble-making. Their own accounts of their war parties as often as not begin with a laconic "once there was a bunch of Comanches out looking for trouble."

So, also, a man was often moved to take steps that made trouble. He stole another man's wife, or he secretly consorted with her. When this was done, the husband had no choice but to initiate legal action. Magnanimity on his part would bring no praise, for there was no doctrine of turning the other cheek. A man's status turned on his bravery, and for an offended husband not to act reflected merely on his courage; it was seen not as an act of forgiveness but as an expression of lily-livered cowardice. Wife-stealing and adultery were not the result of any sexual deprivation on the part of the offender; they were in effect deliberate challenges to the prestige of the husband. As such, he was forced in the eyes of the people to respond to them.

The way was open to him in legal action. Custom impelled men to violate the marital rights of other men. The culture also provided a legal remedy for the wronged man. Except in a few rare and extreme cases, the wrongdoer fully expected to pay the legal price—and did so without forcing the injured husband to a violent bodily attack. He knew well that he would have to pay a price, but he also knew that if he was steadfast and could outface the other man, the price would be light. In that case he would come out of the affair with greater public respect than the husband and he might get the woman to boot. So he took the risk.

In the memory of a dozen old Comanche informants still living in 1933 forty-five cases of old-time legal actions involving wife-stealing and adultery were still vivid enough for detailed recording.[4] Twenty-two were wife-absconding cases and twenty-three involved adultery.

As it takes two to make a contract it also takes two to commit adultery or a wife-absconding (Comanche women were not forcibly stolen). The woman's role in these affairs was very frequently an expression of individual revolt against the workings of Postulate III.[A] Theoretically in all instances,

[3] Wallace and Hoebel, p. 224.

[4] Cf. Hoebel, *Political Organization and Law-ways*, pp. 49–59.

A [see category 181, p. 69--Analyst]

and actually in many, a girl had no formal voice in the choice of her husband. Her brothers gave her away in exchange for a consideration. The takers were usually older and established warriors and hunters who had the goods. In the Comanche ideal such arrangements made for the best marriages. But they were marriages in which the woman was at the mercy of her husband. Working against the stability of such marriages was a strong current of romantic idealism among the young. The ambition of the adolescent girl was to be a *naiβi*,[5] i.e., a beautiful maiden with lustrous, black hair hanging in long braids, and dressed in a fine fringed buckskin dress. The young bucks for their part strove to attract the attention of the girls by playing the role of *tuiβitsi*: "a handsome young man who looks good on a horse." Wife-absconding was really an escape in which a frustrated wife sought a more romantic match with a daring warrior.

Comanche elopements were invariably linked to a war party. The man in the case would be going on a raid with his friends, and he would make an assignation with the woman to go along. It was a way provided by custom to violate the marriage rights of the rightful husband as defined by custom and sustained by law! A nice example of internal inconsistency in the ways of a culture.

When a woman and her lover took off with a war party, two courses were open to the jilted husband. He could mount in hot pursuit in the hope that he could overtake them before they reached enemy territory. Or he could bide his time until they returned from the raid. In enemy country he could not press his suit; here all Comanches had to stand shoulder to shoulder. Aside from this, he could institute his action wherever he might be able to confront his tortfeasor. He might take along some compatriots—brothers, real or putative—to strengthen his courage and his arm, if need be. A real man, however, went alone. It was not necessary for him to gather witnesses, for a Comanche legal action was in no sense a trial. Questions of evidence rarely, if ever, entered. The wife-stealer, or even the adulterer, had no desire to conceal his deed; his aim was to flaunt his prestige in the face of the challenged husband.

If he followed the dictates of decorum, he politely addressed the defendant as "brother." The defendant replied in kind. Did not Comanche brothers share their wives? Syllogistically the reasoning runs:

> Men who share a wife are brothers.
> This man has assumed a share in my wife.
> Therefore, he is my brother.
> (But he is going to pay for the privilege!)

The immediate goal of the prosecuting husband was to get *nanewɔkɔ*, restitutive damages. As an opening gambit he placed his demands high,

[5] Phonetic symbols are used as in the International Phonetics System.

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

customarily asking for four different kinds of articles (four was the mystic number in which most Indians conceived things). Horses were always demanded, numbering from one to ten. The size of the demand varied directly with the wealth of the defendant and the fortitude of the husband and inversely with the war record of the defendant. The husband hoped to squeeze out as much as the traffic would bear and the wrongdoer was willing to yield.

The defendant on his side would pay in the end, but it would be unseemly to yield readily or to first demands. The procedure was one of higgling and haggling—with always the risk of a violent breakdown in the offing. For the husband, if mean-tempered or short of patience, might well cut the palavering short with a quick attack upon the defendant. Theoretically, then, the injured husband had recourse to use of physical force, if the offender failed to recognize his duty to pay up with a settlement that was reasonable in the eyes of the injured party. In fact, however, this was not a genuine legal privilege-right, since in event of homicide retaliation prevailed. The husband who pressed his suit to the killing point was bound to be slain in turn by the defendant's kinsmen. Here was the fatal weakness of the primitive system of the Comanches. Yet in forty-one of the forty-five recorded adultery and absconding cases the offender paid up and the matter became *res judicata* with an award in favor of the plaintiff. It is evident that the Comanches had a strong sense of the fitness of the law and that, willful as they were, wrongdoers submitted to its dictates.

This condition was implemented by two facts: (1) action was not initiated unless the facts were predetermined—guilt, as we have said, was rarely an issue except in sorcery cases; (2) the elopement pattern worked to tone down the first burst of anger; (3) usage saw to it that the husband could in the final resort always muster a greater amount of force than could the defendant.

In the nature of things, the adulterer or wife-absconder was (or thought he was) a more dangerous man than the husband he was wronging. If he had been left wholly to his own resources, the aggrieved husband would more often than not have been in a poor way to exact restitution. In the achievement of justice Comanche practice saw to it that if the husband were man-to-man on the short end of the power stick, he could marshal his brothers or friends to go a-lawing with, or for, him. When confronted with this deputation, the defendant rarely had recourse to marshaling *his* friends or brothers. It was not good form. And more than that—he had made his bid for prestige, and he would surely look bad if he failed to carry it through alone.

The plaintiff who called to his brothers for help naturally lost prestige to some degree, and in addition he had to turn over all that he received in damages. His "lawyers" got the a' of it.

29: Hoebel E-4,5 (1933) 1969 N06 Comanche N06

Comanche society in the nineteenth century was constantly recouping its losses by incorporating captives into the tribe. Such captives were taken as children and mildly exploited as houseworkers, if they were girls, or put to work as herders, if boys. The girls were ultimately married by their captors and so acquired full citizenship. The boys were allowed to join war parties and they, too, were incorporated after a time into the kinship system through adoption as "brothers" or "sons" by their captors or some other Comanche friend. Some captives, however, although they achieved free status in manhood, were not absorbed into a family by adoption. Conversely, attrition so decimated a number of Comanche families that only one or two males were left as survivors. These men and unadopted captives had no brothers upon whom to call when hard put to prosecute a wrong. In such a plight there could be no justice for them if left to their own resources. Aggressors would have a free hand.

At this point the Comanches met the social need for a check on aggression and the provision of redress by means of a simple utilization of the materials at hand. They held no constitutional convention to devise new instruments of government. Personal power was the recognized basis of social relations between men. Power out of control was the threat. Controlled power was the countercheck naturally hit upon. The weak-kneed victim of aggression who had no kin to back him turned to some great warriors to press his cause for him "A brave, well-known warrior," runs the stock phrase.

The brave, well-known warrior simply took over the case on behalf of the injured party and prosecuted it as his own. It gave him a neat chance to face down an upstart warrior, to serve his own ends of self-glorification while acting in the interest of the general social welfare—not against it. He could add to the luster of his status while upholding the law of marriage, instead of flouting it. Vanity and social altruism were wedded in one act and both were exploited for the social good. Their gratification was the sole reward, for the warrior champion received no compensation nor any share of the damages collected.

The intervening warrior was acting as a legal champion. He made no pretense of judging the case or of mediating. He entered with the aim of *forcing* the defendant to pay damages exactly as the injured party would have forced him, if he could. And if damages could not be squeezed out, he personally assaulted the defendant with all the violence he could muster. The ultimate sanction was his to use, if need be.

Comanche procedure in the wife absconding cases never involved questions of fact, for fact and evidence were cleared in preliminary investigation by the husband. He had no problem; the presence of the wife with her lover was enough. Adultery, however, was usually surreptitious. And this posed problems. To meet them the suspecting husband had recourse

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

to several violent privilege-rights. A married woman could be wholly at the mercy of her husband's whim. He was free to extort from her a confession, as well as the name of her lover, by use of the cruelest third-degree methods. He either choked her until she gasped out the required information, or he took her out to a spot some distance from the camp where he built a fire over which he slowly lowered his terrorized wife until she gave him the information he wanted.

More refined men put the matter in the hands of the Sun and Earth. They took their wives to a lonely spot for *taβ βekat*, "sun killing." The suspecting husband filled his ceremonial pipe and smoked to the great powers, addressing first the sun. "You, Father, know the truth of this matter. As you look down upon them don't let them live until fall." Then to the Earth he said, "You, Mother Earth, as you know what is true, don't let them live a happy life on you."

Thereupon the wife smoked the pipe and avowed her innocence with an appeal to the Sun and Earth to kill her if she lied. Comanche dogma has it, and supporting cases are offered, that when women made this ritual conditioned curse, the Sun knew if they were guilty, and it killed them. Its penalty for perjury was death.[6]

Women, for their part, had no demand-rights against their husbands that they be faithful in marriage; they could exact no penalties from them. Hence, they had no opportunities to put their husbands to the test. But in recent decades some did turn the tables by demanding of the Sun and Earth, when they took the oath, that the powers kill the husband if the wife were innocent of the act.

Finally, it should be noted that when the issue was put to the Sun and Earth, no legal action against the corespondent followed. The death of the wife ended the matter.

On the other hand, the collecting of damages from the offending male did not necessarily absolve the wife. If her absconder was strong enough, she had a good chance of escaping her husband's ire. But she ran terrible risks. In seven of forty-five Comanche adultery and wife-absconding cases the women were slain by their husbands—one in seven! Three of these were adulteresses; four were absconders. Of the twenty other adulteresses five were mutilated by their husbands; four had their noses cut off, and one had the soles of her feet slashed so she could not walk.

One may wonder that any Comanche woman played the game against such odds. We see it as additional evidence that mere severity of the law is not enough by itself to make people behave.

The Comanche law of murder was most simple. For a Comanche husband to kill his wife—with or without good cause—was not murder.

[6] Hoebel, *Political Organization and Law-ways*, pp. 90-91.

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C K 48 Within a small peyote group will exist enormous differences in distance to be travelled. Two cars in a family will frequently distort the picture. The occupation of an individual will to a great extent determine the amount of travel time available regardless of the amount of interest in visiting, peyote, or pan-Indian affairs in general. Also, individuals who must commute long distances to a steady job will rack up high speedometer readings without spending much time visiting, etc. In fact, I have even observed some Comanches with widely dispersed kin and friends spending more time visiting than many Kiowas whole families live within a two mile radius. In spite of this, I still feel that the travel pattern of the Comanches and Kiowa is considerably different from that of the neighboring whites Just how it can be measured or accurately described, however, I do not know..

C K 60 829 177 602 Turning now to the kinship organization, it is safe to say that the same complexity due to individual variations is to be found. Moreover, the attitudes toward change color the data given by informants. In this way the father of a family that has kept its kinship patterns (relatively speaking) may be convinced that the old system has disappeared entirely. The converse may also be the case.

C K [569] [191] The concept of the ideal pattern has been preserved by all the /33/ older people I have met, Kiowa, Comanche; mixed bloods, Christians and Peyotists. The pattern does not seem to be directly affected by inte-marriages except insofar as the mixed marriage may change the dominant language of the family. The actual behavior patterns are changing in many respects. One of the chief factors is

C K 60 177 602 the small size of the tribe (Comanche in this instance) which has forced marriages to occur within the exogamous group to an extent. Strictly tabu marriage have occurred both among the Kiowas and

[161] 592 588 [684] Comanches but these are still recognized as wrong and the participants are stigmatized. The sanctions are not as sever as the traditional ones, however.